

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
)	CONSENT AGREEMENT
)	AND FINAL ORDER
)	
RITTER FEEDYARDS, LLC.)	
)	
Respondent.)	
)	Docket No. CWA 07-2012-0018
Proceedings under Section 309(g) of the)	
)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	
)	
)	

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency, Region 7 (EPA) and Ritter Feedyards, LLC (Respondent), have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order. This action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules).

This Consent Agreement and Final Order completely and finally settles all civil and administrative penalty claims and causes of action set forth below for Respondent's alleged discharges of pollutants into the Rock Creek and the Elkhorn River and their tributaries, waters of the United States, in Cuming County, Nebraska.

ALLEGATIONS

Jurisdictional Allegations

1. This is an administrative action for the assessment of civil penalties, instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This Consent Agreement and Final Order serves as notice that the EPA has reason to believe that Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants from a concentrated animal feeding operation (CAFO) into the navigable waters of the United States in violation of its National Pollutant Discharge Elimination System (NPDES) permit(s) and Section 402 of the CWA, 33 U.S.C. § 1342.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of an NPDES permit issued pursuant to that Section.

5. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362 to include, *inter alia*, biological materials and agricultural waste discharged to water.

6. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362 to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation . . . from which pollutants are or may be discharged.”

7. “Animal feeding operation” or “AFO” is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any twelve month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

8. “Concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an animal feeding operation that is defined as a Large CAFO in accordance with 40 C.F.R. § 122.23(b)(3).

9. “Large CAFO” is defined according to 40 C.F.R. § 122.23(b)(4)(iii) as an animal feeding operation that stables or confines more than “1,000 cattle other than mature dairy cows

or veal calves.”

10. “Waters of the United States” are defined in 40 C.F.R. § 122.2 to include intrastate rivers and streams, and tributaries thereto.

11. The Nebraska Department of Environmental Quality (“NDEQ”) is the agency within the state of Nebraska with the authority to administer the federal NPDES Program. The EPA maintains concurrent enforcement authority with authorized state NPDES programs for violations of the CWA.

12. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the EPA to commence an action for administrative penalties against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Allegations

13. Respondent owns and operates an animal feeding operation that is located in the northern ½ of the northwest ¼ of Section 34, Township 23 North, Range 5 East, in Cuming County, Nebraska (the “Facility”).

14. On March 10, 2011, an EPA inspector flew over the Facility to document site conditions through observations and aerial photography. During the over flight, the EPA inspector observed cattle being confined and fed in winter feeding areas. The inspector also observed channelized flow paths flowing from winter feeding areas and feedstock storage areas into Rock Creek. Rock Creek flows east for approximately 0.5 miles before discharging into the Elkhorn River.

15. The Facility has a capacity of 1,200 head of beef cattle and was confining approximately 1,038 head at the time of the April 20, 2011, EPA inspection. The number of cattle confined and fed at the Facility is greater than 1,000, therefore the Facility is a large CAFO as that term is defined in 40 C.F.R. § 122.23(b)(4) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. The EPA issued an Administrative Compliance Order (ACO) on August 16, 2011, requiring the Respondent to comply with its NPDES permit and prevent unauthorized discharges from the facility. Based on information provided in accordance with the ACO, Respondent is in compliance with the ACO.

17. Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

18. The Facility confined and fed or maintained cattle for a total of forty-five (45) days or more in any twelve month period at all times relevant to this Consent Agreement and Final Order.

19. Neither crops, vegetation, forage growth, nor post-harvest residues is sustained over any portion of the Facility's feeding areas at all times relevant to this Consent Agreement and Final Order.

20. The Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1).

21. On July 11, 2008, Respondent was issued NPDES permit coverage under the General Permit and was assigned NPDES permit number NEG011179.

22. Part II(a)(1) of Respondent's NPDES permit, states that cattle open lot CAFOs are not allowed to discharge manure, litter, or process wastewater pollutants into waters of the State from the production area, except when precipitation causes an overflow of manure, litter, or process wastewater. The overflow may be discharged into waters of the State provided: (1) the livestock waste control facility is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event; (2) such discharge was the result of the rainfall event(s); (3) no feasible alternative to discharging existed; (4) only waste in excess of the storage capacity of the Livestock Waste Control Facility was discharged; (5) the discharge was conducted under such conditions to minimize any adverse effects to waters of the State; and (6) proper notification of the discharge was received.

23. Part II(A)(1)(a)(01) of Respondent's NPDES permit, states, in pertinent part, that cattle open lot CAFOs are not allowed to discharge manure, litter, or process wastewater pollutants into waters of the State from the production area, except when precipitation causes an overflow of manure, litter, or process wastewater. The overflow may be discharged into waters of the State provided: (1) the livestock waste control facility is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event.

24. Part III (A)(1) of Respondent's NPDES permit states, "The permittee shall implement best management practices, as well as operating and maintaining the animal feeding operation and the livestock waste control facilities to prevent water pollution and protect the environment of the State."

25. Part III(A)(2) of Respondent's NPDES permit states, "The permittee shall use the most effective methods, based on the best technology available for specific sites, to prevent or reduce the discharge of pollutants to waters of the State."

26. Rock Creek and its tributaries are waters of the United States, as defined under 40 C.F.R. Part 122.2.

27. Based on aerial photographs taken before the inspection and snowfall data and temperature data collected after the inspection, the EPA determined that the Facility discharged feedlot-related pollutants to Rock Creek.

28. Based on aerial photographs and the inspection, the EPA determined that, for 45 days or more, Respondent maintained cattle in an area of the Facility that had no runoff controls and on which Respondent had not implemented best management practices.

29. At all times relevant to this Consent Agreement and Final Order, Respondent's Facility was a Large CAFO as that term is defined in 40 C.F.R. §122.23(b) and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

30. At all times pertinent to this Consent Agreement and Final Order, the intermittent yet ongoing flow of wastewater from Respondent's Facility to the Rock Creek and Elkhorn River constituted unauthorized discharges of pollutants from a point source to waters of the United States. At all times pertinent to this Consent Agreement and Final Order, Respondent failed to implement runoff controls and best management practices on certain areas of the Facility. These were violations of Respondent's NPDES permit and Sections 301 and/or 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and implementing regulations.

CONSENT AGREEMENT

31. Respondent admits the jurisdictional allegations in this Consent Agreement and Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

32. Respondent neither admits nor denies the factual allegations contained in this Consent Agreement and Final Order.

33. Respondent waives any right to contest the allegations as well as its right to appeal the Final Order accompanying this Consent Agreement.

34. Respondent and Complainant each agree to bear their own costs and attorney's fees.

35. Nothing in this Consent Agreement and Final Order shall alter or otherwise effect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

36. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

37. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent is in compliance with Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, with respect to the facility located in the northern ½ of the northwest ¼ of Section 34, Township 23 North, Range 5 East, in Cuming County, Nebraska.

38. The effect of settlement described in paragraph 35, above, is conditional upon the

accuracy of the Respondent's representations to the EPA, as memorialized in paragraph 36 of this Consent Agreement and Final Order.

39. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of Twenty Thousand Dollars and No Cents (\$20,000.00) as set forth in Paragraph 1 of the Final Order.

40. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

FINAL ORDER

Payment Procedures

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Twenty Thousand Dollars and No Cents (\$20,000.00) plus interest of Seventy-Four Dollars and Ninety-Six Cents (\$74.96) in accordance with the payment plan set forth herein. Within thirty (30) days of the effective date of this Consent Agreement and Final Order, Respondent shall make the first payment of \$5,018.74. No later than ninety (90) days from the effective date of this Consent Agreement and Final Order, Respondent shall make the second payment of \$5,018.74. No later than 180 days from the effective date of this Consent Agreement and Final Order, Respondent shall make the third payment of \$5,018.74. No later than one (1) year from the effective date of this Consent Agreement and Final Order, Respondent shall make the fourth and final payment of \$5,018.74.

2. Pursuant to 40 C.F.R. § 13.18, failure to make any payment according to the schedule set forth in Paragraph 1 of the Final Order, will automatically accelerate the debt which will become due and owing in full immediately. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest.

3. Payment of the penalty shall be by cashier or certified check made payable to the "United States Treasury" and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

This payment shall reference docket number CWA-07-2012-0018.

Copies of the check shall be mailed to:

Sara Hertz Wu
Assistant Regional Counsel
U.S. Environmental Protection Agency – Region 7
901 North 5th Street
Kansas City, Kansas 66101;

and to

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
901 North 5th Street
Kansas City, Kansas 66101.

4. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

Parties Bound

5. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

General Provisions

6. Notwithstanding any other provision of this Consent Agreement and Final Order, the EPA reserves the right to enforce the terms of the Final Order portion of this Consent Agreement and Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

7. Complainant reserves the right to take enforcement action against Respondent for any future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.

8. This Order shall be entered and become effective only after the conclusion of the

period of public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45. The effective date shall be the date it is signed by the Regional Judicial Officer.

9. Respondent and Complainant shall bear their respective costs and attorney's fees.

10. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

Karen A. Flourney
Director
Water, Wetlands and Pesticides Division

Sara S. Hertz Wu
Assistant Regional Counsel

RESPONDENT:
RITTER FEEDYARDS, LLC

Date

Name (Print) _____

Title _____

IT IS SO ORDERED. This Final Order shall become effective immediately.

Robert Patrick
Regional Judicial Officer

Date

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Consent Agreement and Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Consent Agreement and Final Order by first class certified mail, return receipt requested, to:

Mr. Jeremy Ritter
Ritter Feedyards, LLC
1376 10th Road
Beemer, Nebraska 68718

Mr. Dan Bracht, Esq.
Law Offices of Daniel P. Bracht, P.C., L.L.O.
127 East Walnut Street
P.O. Box 252
West Pointe, Nebraska 68788

Mr. Dennis Heitmann
Agricultural Section
Water Quality Division
Nebraska Department of Environmental Quality
1200 N Street, Suite 400
Lincoln, Nebraska 68509

Date